IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6904 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHKUMAR KANTILAL PARMAR

Versus

DISTRICT COLLECTOR

Appearance:

1. Special Civil Application No. 6904 of 1999

Mr. Unwala for MR PK JANI for Petitioner No. 1

Mr. Pandya, AGP for Respondent No. 1

Ms. Sejal Sutaria for MR VH DESAI for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 02/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Unwala for Mr. Jani

for the petitioner; Mr. Pandya, learned AGP for the State authority and Ms. Sutaria for Mr. Desai for the respondent 2/3.

In this petition, the petitioner has challenged the order dated 1st August, 1999 passed by the District Collector, Mehsana under section 258 of the Gujarat Municipalities Act, 1963 wherein the resolution passed by the Kheralu Nagarpalika dated 23rd April, 1997on the resolution no. 44 of the general body giving promotion to the present petitioner with effect from 1st May, 1997 on the post of Clerk has been stayed by the Collector. The Collector has also issued notices to the President and the Chief Officer respondent Kheralu Nagarpalika. Here, it should be noted that the present petitioner is not a party to the proceedings before the Collector.

This petition was admitted by this court by issuing rule thereon and the order dated 31st August, 1999 passed by the District Collector which is having adverse effect against the petitioner has been stayed by this court and in view of the interim order passed by this court, ad.interim order passed by the Collector dated 31st August, 1999 has not been executed.

During the course of hearing of this petition, learned advocate Mr. Unwala appearing for the petitioner has raised the only contention that the order in question passed by the Collector, Mehsana is violative of the principles of natural justice since it has been passed without affording any opportunity of hearing to the petitioner and, therefore, same is required to be quashed and set aside without observing anything on the merits of the matter. He also submitted that the benefits flowing from the resolution passed by the respondent Nagarpalika dated 23.4.1997 having effect from 1st May, 1997 in favour of the petitioner have been stayed by the Collector by way of ad.interim order against the said resolution while issuing notice to the respondent Nagarpalika alone and, the order in question is violative of the principles of natural justice. He, therefore, submitted that the order in question is required to be quashed and set aside on that ground alone while reserving liberty in favour of the Collector, Mehsana to pass appropriate order in the proceedings before him after affording reasonable opportunity to the petitioner for hearing. He also prayed for continuing the interim directions issued by this court while admitting the petition.

Considering the notice issued by the Collector to

the respondent Kheralu Nagarpalika under section 258 of the Gujarat Municipalities Act, 1963, it appears that the Collector has stayed operation of the resolution passed by the Nagarpalika dated 23.4.1997 and has not issued any notice to the petitioner before passing such an ad.interim order though the petitioner is having adverse effect since he is the beneficiary of the said resolution and was receiving benefits flowing from the said resolution. I am, therefore, of the opinion that the ad.interim order of the Collector is violative of the principles of natural justice as it has been passed by the Collector without hearing the petitioner having adverse effect on the pay packet as well as prestige and status of the petitioner.

Recently, in the matter of BHUPINDER PAL SINGH VERSUS DIRECTOR GENERAL OF CIVIL AVIATION & OTHERS reported in 2003-II-LLJ page 1032 [August,2003 Issue], the question has been examined by the apex court that in case when any adverse orders are required to be passed against any person having adverse civil consequences against the person and it is also affecting his status and prestige in the employment, then, before passing such adverse order, principles of natural justice must have to be followed, otherwise, order is not sustainable as being in violation of the principles of natural justice. In para 3 of the said decision, it has been observed by the Hon'ble apex court as under:

" Looking to the assertion made by the appellant that no opportunity was given to him during the investigation or inquiry based on which the order was passed on July 21, 1999 adversely affecting his rights and status in the absence of any counter affidavit denying the same either before the High Court or before this Court, there is no impediment or difficulty in holding that the order dated July 21, 1999 was passed in violation of the principles of natural justice. Even a perusal of the impugned order indicates that no opportunity was given to the appellant. The High Court proceeded on wrong assumption that the second inquiry was not a de novo inquiry. It appears to us that no opportunity was given to the appellant either during the inquiry made for the first time or in the second inquiry. Since the order passed is in clear violation of principles of natural justice, it is unnecessary for us to go into the merits of the other contentions raised. In the normal

course, we would have set aside the order giving liberty to the respondent to hold a fresh inquiry. Since the appellant has superannuated and at this length of time, we think it is neither appropriate nor desirable to direct a fresh inquiry."

Looking to the order dated 31.8.1999 passed by the Collector, it is against the petitioner. Though the petitioner is not a party to the said proceedings, this order has been passed against him without affording any opportunity to him though it was having adverse effect on the pay packet and status as well as prestige of the petitioner. Therefore, considering the aforesaid decision of the apex court and also considering the facts and circumstances of the present case, I am of the opinion that the order dated 31.8.1999 passed by the Collector is required to be quashed and set aside on that ground alone without observing anything on merits while reserving liberty in favour of the Collector to pass appropriate order in accordance with law after affording reasonable opportunity of hearing to the petitioner.

In the result, this petition is allowed. The order dated 31.8.1999 passed by the District Collector, Mehsana in Dispute No. 28 of 1999 under section 258 of the Gujarat Municipalities Act, 1963 is hereby quashed and set aside as violative of the principles of natural justice with a liberty in favour of the respondent Collector to pass appropriate order in accordance with law in Dispute No. 28 of 1999 after affording reasonable opportunity of hearing to the petitioner. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.2.9.2003. (H.K. Rathod,J.)
Vyas